## REMARKS

Initially, Applicant notes that the amendments and remarks made by this paper are consistent with those presented to the Examiner during the telephone call of May 16, 2008. Accordingly, entry of this amendment and reconsideration of the pending claims is respectfully requested.

By this paper, claims 1, 10, and 22 have been amended and no claims have been added or canceled, such that claims 1-23 remain pending, of which claims 1, 10 and 22 are the only independent claims at issue.[1]

The Office Action mailed April 16, 2008, considered and rejected claims 1-23. Claims 1-23 were rejected under 35 U.S.C. § 102(b) as being anticipated by Collins (U.S. Publ. No. 2002/0029285).[2]

The currently claims are directed to permitting a computing system to operate in a recovery mode while still allowing the computer to reliably receive normal messages. For instance, claim 1 recites a method for permitting the computing system to operate in recovery mode while ensuring reliable message processing for messages received during the recovery mode operations in which at least one instance governing a transaction is operating in a recovery mode. In the method, a message corresponding to a particular message transaction is received, wherein the message is a normal message suitable for normal mode operations with respect to the particular message transaction and an instance governing the particular message transaction is in a recovery mode rather than a normal mode. Upon receiving the message, it is determined from state information corresponding to the particular message transaction that the instance governing the particular message transaction is in the recovery mode rather than the normal mode. Then, it is determined that the received message is a normal message suitable for normal mode operations with respect to the particular message transaction, wherein the received message cannot be processed until the instance governing the particular message transaction is in the normal mode. The received message is then placed into a persistent queue associated with the instance governing the particular transaction for later processing when the instance governing

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[1] Support for the claim amendments is found on page 10, 12, and 14 of the Application as originally filed.

[2] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

the particular transaction is in the normal mode rather than the recovery mode. Finally, the mode operation for the instance governing the particular transaction is completed.

As reflected above, each of the claims were rejected as anticipated by Collins. Collins is directed to adapting graphical data processing activities to changing network conditions in a distributed computing system. The most relevant portion of Collins discloses a recovery mode in which in response to receiving a command related to an uncached bitmap, a client agent reads an incoming protocol stream but does not process it until the bitmap is received. Instead, the client agent builds a queue for received commands from the server and processes the queue once the bitmap is received.

Applicant respectfully submits that while Collins relates to a recovery mode and the receipt of commands in such a mode, it fails to teach or reasonably support all of the claim elements of the current claims. For example, the current claims are directed to message transactions, while Collins describes a protocol stream, and the claims recite that the state information, queue, and mode all be with respect to a particular message transaction. In view of the failure of Collins to describe message transactions as recited in combination with the remaining claim elements, Applicant respectfully submits that for at least this reason the current claims are allowable over the cited art.

A message transaction is an exchange of messages following a particular message exchange pattern with a particular client system. An instance governs each transaction following the particular message exchange pattern. When there is a failure in some part of the system, there will be likely be at least one instance that did not complete its message exchange pattern and that instance will enter into the recovery mode. Other instances that completed their transaction or that started a new transaction will operate in a normal mode. After an instance completes its recovery mode, it can then enter into the normal mode and process any messages that were stored.

The message transactions of the current claims do not properly correspond to the protocol stream of the cited art. This is at least partially acknowledged in the Office Action where it states, "incoming protocol stream reads on a message". If the Office Action is asserting that the protocol stream is a message, then there is no corresponding transaction associated with the message that is described in the cited art. In particular, there is no message exchange pattern that is being followed, as the client application only receives data and fails to communicate with the

server unless there is a failure. This is contrasted with the pending claims, where the particular client actively communicates with the computer system in a defined exchange pattern.

Without disclosing transactions, it is not possible for the cited art to teach state information, a queue, or a mode with respect to a particular transaction, as is recited in the pending claims. The current claims allow for multiple instances and transactions to be running concurrently in possible different states. For each transaction there is a distinct instance governing that transaction. The state information for one transaction is not the same as the state information for another transaction. When a message is received, the present claims recite a system which accesses state information of the transaction associated with the message to determine if the relevant instance is in recovery mode. The state information is associated to that particular transaction because a different transaction may be in a different mode. The cited art, however, does not reference state information as acknowledged in the Office Action, where it is asserted that state information is inherent. However, in the present claims, if the computer system is in a recovery mode, the governing transaction could still be in a normal mode. The computer system will not know the status of the particular instance until it checks the state information associated with the <u>transaction</u>. The cited art however, does not have a need to check any state information because once it enters the recovery mode, all incoming protocol streams are assumed to be in recovery mode.

Furthermore, with regard to the assertion that the state information is inherent, Applicant respectfully notes that the fact that a certain characteristic <u>may</u> be present is not sufficient to establish inherency, and extrinsic evidence must make it clear that the missing characteristic is <u>necessarily</u> present. (M.P.E.P. § 2112(IV)). For this reason, in reliance upon a theory of inherency, the Office "must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic <u>necessarily</u> flows from the teachings of the prior art." (*Id.*) In this regard, Applicant notes that the Office Action merely states that the feature is inherent, without any basis in fact and/or without any technical reasoning. For at least this reason, the assertion of inherency is improper. Furthermore, even if state information is inherent in the system, the mere existence of state information does not <u>necessitate</u> that it correspond to a particular message transaction. For instance, state information could instead correspond to packets, to a device/client agent, or to other components. Thus, inasmuch as it is not necessary that state information correspond to a message transaction,

Collins also does not inherently disclose state information corresponding to a message transaction as recited in the pending claims.

Independent claim 22 contains further elements also not found in the cited art, including the processing of a second message associated with a second transaction. The second message is received during the processing of the particular transaction and is a normal message. Because the second transaction is in a normal mode, the second message is processed normally. This independent claim highlights that multiple transactions can run concurrently and that the transactions are not necessarily in the same mode. Such features, as recited in combination with the other claims elements are not found in the cited art of Collins.

Dependent claims 2 and 14 contain still additional elements not found in the cited art. For example, they recite that the state information related to the transactions are loaded from persistent media in response to the act of receiving the message. By having the state information in persistent media, the computer system maintains the state even after a power loss. The Office Actions cites the protocol stream being stored to persistent storage as teaching this limitation. However, the messages of the current invention are not what is described by this claim element, but it is instead describing reading **state information** from the persistent media. This allows for recovery after a power loss. The cited art of Collins only describes storing the protocol stream and then reading the protocol stream after the bitmap arrives. If all the commands are to be read, there is no need for the commands to have associated state data stored with them. Collins fails to teach reading any state information from a persistent media and therefore also necessarily fails to disclose storing state information on persistent media, or any reason as to why having the state information stored on persistent media would be performed.
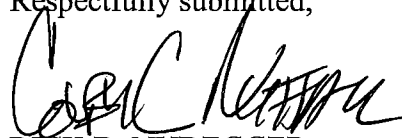
In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner

provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 15<sup>th</sup> day of July, 2008.

Respectfully submitted,

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